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Attorney Docket: 81597

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

Applicant(s): Hideo NAKAO et al
Serial No. : 304,988
Filed : September 23, 1981
For : CEPHALOSPORIN DERIVATIVES,
THEIR PREPARATION AND
COMPOSITIONS CONTAINING
THEM
Art Unit &
Examiner : 122; P.M. Coughlan, Jr.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on the date noted below.

Attorney:

Dated: January 6, 1984

In the event that this paper is late filed, and the necessary petition for extension of time is not filed concurrently herewith, please consider this as a Petition for the requisite extension of time, and to the extent not tendered by check attached hereto, authorization to charge the extension fee to Account No. 06-1378

SUPPLEMENTAL RESPONSE

Hon. Commissioner of Patents and Trademarks

Sir:

This is a supplement to the AMENDMENT filed December 8, 1983.

Please enter the enclosed DECLARATION PURSUANT TO 37 CFR 1.132 of Dr. Hideo Nakao dated December 26, 1983 (hereinafter referred to as the "1983 Declaration"). This 1983 Declaration provides data establishing that applicants' claimed compounds exhibit a very high order of antibacterial activity against a broad spectrum of test microorganisms. The data also establishes that applicants' claimed compounds have an unexpectedly high recovery rate in the urine recovery test which is used to indicate suitability for oral administration.

The first paragraph on page 3 of the Office Action of June 6, 1983 rejected under 35 USC 103 all of the claims in the application except Claims 21, 25, 28 and 32 as being unpatentable over the cited Durckheimer patent. The rejection continued with a statement "It is again considered that the compounds being claimed are prima facie obvious from the reference while the showings in the declaration are limited to two esters (a and i)." The claims which were not rejected over Durckheimer, namely Claims 21 and 28 were directed to the ester which was identified

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in Dr. Hideo Nakao's DECLARATION PURSUANT TO 37 CFR 1.132 dated December 20, 1982 (referred to hereinafter as the "1982 Declaration") as compound "a". Claims 25 and 32 were directed to the ester which is identified in said 1982 Declaration as compound "i". Claims 21 and 28 have been cancelled and are being prosecuted in a divisional application as noted in applicants' SUPPLEMENTAL AMENDMENT filed June 3, 1983.

It is clear from the foregoing that Claims 25 and 32 were not rejected over the Dirckheimer reference in view of the showing (comparative data) in the 1982 Declaration establishing the unexpectedly superior properties of the compound identified therein as "i". This same compound is identified in the enclosed 1983 Declaration as compound "A".

The enclosed 1983 Declaration establishes that Compounds C, D, E, F, G and H which are within the scope of the claims of the present application, have the same unexpectedly high rate of recovery in urine when compared to the comparative control compounds including prior art compounds as that of Compound A which is Compound i in the 1982 Declaration. It is therefore respectfully submitted that the data in the 1983 Declaration establish that claims directed to the compounds of the present invention disclosed therein have unexpectedly superior properties when compared to the prior art compounds and are patentably distinguished therefrom for the same reasons recognized by the Examiner when he did not apply the rejection based on Durckheimer against Claims 25 and 32 based on the showing for Compound i in the 1982 Declaration.


It is further respectfully submitted that the Compounds A through H in the 1983 Declaration fully support and are illustrative of all of the compounds within the scope of the broadest claims, namely Claims 33 and 40.

It is respectfully submitted that applicants have established that the claimed subject matter is patentably distinguished from the disclosure of the Dirckheimer reference and also from the disclosure of the other applicable prior art.

The rejections in the Office Action of June 6, 1983 based on the Takaya et al EP 029,557 and the Heynes EP 034,536 are respectfully traversed in view of the detailed reasons why these references are not prior art against the claims in the present application for the reasons set forth in applicants' AMENDMENT filed December 8, 1983.

Reconsideration is requested. Allowance is solicited.

Respectfully submitted


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HG/ac

Enc.: DECLARATION PURSUANT TO 37 CFR 1.132 dated December 26, 1983.